

## AGREEMENT FOR TRAFFIC SAFETY ENFORCEMENT SYSTEM

THIS AGREEMENT, dated this 19<sup>th</sup> day of July, 2017 is between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio ("City") and Optotraffic, LLC ("Contractor"), a for-profit corporation with its principal place of business in the State of Maryland.

### WITNESSETH THAT:

**WHEREAS**, the City is committed to the enforcement of traffic laws within its municipal corporate limits;

**WHEREAS**, the City seeks to implement a revised Traffic Safety Enforcement System (the "Program") to reduce traffic violations and associated motor vehicle accidents;

**WHEREAS**, the City submitted a Request for Proposal-Traffic Safety Enforcement Systems and Related Services RFP-No. 16018D dated April 2016 (hereinafter "RFP"), a copy of which is attached hereto as Exhibit A and incorporated herein, seeking proposals for a complete traffic safety enforcement system and related services, including installation, maintenance, implementation and management of the City's Program;

**WHEREAS**, the Contractor responded to the RFP, a copy thereof is attached hereto as Exhibit B and incorporated herein, representing that it is a leading vendor in the United States supplying such systems, has the experience in delivering full ticketing services, and is willing to provide its equipment and services to the City for the implementation, management and maintenance of the City's Program; and

**WHEREAS**, the Contractor's response to the RFP has been accepted by the City.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

### **SECTION ONE. CONTRACTOR'S OBLIGATIONS**

The Contractor shall perform all work and provide all equipment, products and services as described in Exhibit B, which is attached hereto and incorporated herein, to the extent not in conflict with the terms, conditions and requirements set forth in Exhibit A. Primarily, the Contractor shall provide, as set forth in Exhibit B, the following to implement, manage and maintain the Program for the City:

- 1) Design and install fixed photo red light enforcement systems, portable and fixed speed enforcement systems, and handheld speed enforcement systems;
- 2) Create an Integrated Citation Management system;
- 3) Provide training to City personnel;
- 4) Provide system maintenance;
- 5) Provide and perform citation processing;
- 6) Provide Customer service;
- 7) Contractor will provide to the City, upon request, reports or any program performance related information;
- 8) Litigation support; and

9) Public awareness and promotional campaign support to include:

- a. Updates to the City's automated enforcement website as necessary;
- b. Providing information and education for City Officials and employees;
- c. Assisting the City with any information needed for press conferences, press releases, and newspaper publications;
- d. Providing reports and statistics concerning program effectiveness;
- e. Providing basic education about the science and technology behind the Program system;
- f. Participating in community events and outreach activities with local schools; and
- g. Creating and providing public service announcements and/or mailing inserts

For the purpose of this Agreement, all work, products, and services to be furnished to the City pursuant to this Agreement shall be collectively referred to hereinafter as the "Contractor Obligations."

To facilitate effective communication with the City and to achieve accountability in the performance of this Agreement by the Contractor, the Contractor hereby designates Cory Kuzyk to act as the "Project Manager." The Project Manager shall have the power and authority to make management decisions on behalf of the Contractor. In the event the Contractor changes the person designated as the Project Manager, it shall immediately notify the City. The Project Manager or an alternate shall be available to respond twenty-four hours per day, seven days a week, to any Communication by the City's Project Manager and/or his or her designee.

In performing the Contractor Obligations, the Contractor shall utilize the services of competent and licensed (where appropriate) professionals, and warrant and represent that all Contractor Obligations will comply with all applicable federal, state, local and other laws, ordinances, codes, regulations, orders and agency or industry standards or other standards applicable to the Contractor Obligations.

The City maintains a list of vehicles to be towed ("Tow List") for enforcement of unpaid parking and photo enforcement violations. To facilitate the City's need to maintain an accurate Tow List, Contractor agrees to the following:

- 1) To establish an automated method, in coordination with the City's IT Department, to:
  - a) Transfer Notice of Liability data to the City's MIS database. The data transfer must occur no less frequently than once daily.
  - b) Transfer Notice of Liability status updates to Dayton's MIS database, which is used to track towable vehicles. The status updates must occur in "real time" or "near real-time"

basis for payments made by credit card to facilitate an accurate up-to-date Tow List. Lockbox payments made by check or money order will be updated daily.

- 2). The appropriate electronic data transfer methodology and all other technical details will be coordinated with the City in order to provide a reliable and accurate transfer of data. The data transfer methodology must be designed in a manner that will ensure no data loss in the event of connectivity problems and/or scheduled downtime for Dayton's MIS database.
- 3). Provide the City with a technical "point of contact" or Helpdesk support for troubleshooting data and/or data transfer issues as they may arise.

## **SECTION TWO. COMPENSATION**

### **A. Fee**

The Contractor shall be entitled to retain, as complete payment for the performance of all Contractor's Obligations during the entire term of this Agreement, the set fee of \$21.25 per paid Notice of Liability. However, in the event the owner or responsible party tenders a partial payment of a Notice of Liability, the Contractor shall be permitted to retain twenty-five percent (25%) of the partial payment, up to the maximum of \$21.25 payment amount specified above, with the remaining seventy-five percent (75%) remitted to the City.

For purposes of this Agreement, "paid Notices of Liability" shall mean that the owner or responsible party tendered complete payment of the civil penalty for a violation of Section 70.121 of the Revised Code of General Ordinances of the City of Dayton.

Should the City be required to return money collected for Notices of Liability, Contractor shall not be entitled to receive payment for those Notices of Liability, and if payment has already been made to the Contractor, the Contractor agrees to return its portion of payments to the City for the Notices of Liability within 30 calendar days of the City's notice to Contractor.

### **B. Payment of Paid Notice of Liability Fee**

Notices of Liability (NOL) payments may be made by cash (only for the to be defined walk-in-payment option), check, money order, or credit card. Contractor, directly and or through Contractor's third party processor, will process payments made by mail and, at no additional cost to City, provide the capability for individuals receiving NOL to view and pay NOL online by credit card. All NOL and delinquent notices will expressly state that all payments of fines are to be made payable to City at the designated physical or website address. All payments of NOL will be deposited into the City's Lockbox Account described below, Payments of NOL will be tracked using the system of record, VioView™ Financial Tracking System (VioView FTS). Contractor is solely responsible for the functionality, security and maintenance of the payment system and will ensure that it conforms to all federal, local and state laws, rules and regulations, as well as any and all banking rules and regulations that pertain to all forms of credit card payment. Credit card processing costs will be paid by Contractor; Contractor is authorized to

charge a reasonable credit card convenience fee to individuals who pay by credit card and such credit card convenience fees are not considered revenue under this Agreement and will be retained in full by Contractor. Contractor shall provide Dayton with AICPA SOC 2 Reports to ensure that the process used is secure and meets with AICPA best practices. Moreover, the services provided shall conform with AICPA Statement on Standards for Attestation Engagements (SSAE) No. 16.

To ensure accurate and complete tracking of program funds, City will establish a bank account with lockbox service "Lockbox Account" for the purpose of accepting deposits of NOL payments, including credit card payments and returned check processing costs. The Lockbox Account shall belong to the City. Contractor shall pay for all costs associated with the Lockbox Account. The invoices for the charges for the Lockbox Account and services shall be sent directly to the Contractor and the Contractor shall pay the invoices directly. All payments other than credit card payments shall be deposited in the City's Lock Box Account daily. All credit card payments will be transferred on a weekly basis, on Monday, or the following business day in the event that Monday falls on a bank holiday, Contractor will initiate a transfer of funds to the City's lockbox deposit account equal to the total credit card NOL payments collected in the 7 day period beginning on Saturday and ending on the immediate preceding Friday. Also on a weekly basis on Friday, or the following business day in the event that Friday falls on a bank holiday, Contractor will provide Dayton with a reconciliation letter of the preceding business week's lockbox account, showing a breakdown of method of payment, partial vs. full payment, identifiers of the NOL's that were paid to facilitate the City's tracking of payment plans, deposits adjusted by any refunds, returned checks or other related account activity. The reconciliation letter will be sent to Dayton via email or other mutually agreed upon method. Contractor shall provide direct access to Dayton to its VioView FTS database. By the end of the second business week following a month's close, Contractor will invoice the City for the fees as set forth in Section 2A. All interest generated from the deposits shall belong to the City.

Contractor agrees that any and all computer software, hardware, firmware, payment card processing policies, procedures, and related services proposed to be utilized to process payments shall be:

- a. Completed by a qualified professional payment card processing firm acceptable and approved by the City.
- b. Fully compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>).
- c. Contractor shall provide and agrees to maintain the PCI compliance reporting Attestation of Compliance ("AOC") Form(s) in its/their latest version(s), or within the year of record as requested and/or in an annual transmittal to the City of Dayton ([https://www.pcisecuritystandards.org/documents/PCI-DSS-v3\\_2-AOC-Merchant.docx?agreement=true&time=1493826893795](https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Merchant.docx?agreement=true&time=1493826893795) or [https://www.pcisecuritystandards.org/documents/PCI-DSS-v3\\_2-AOC-Officer.docx?agreement=true&time=1493826893795](https://www.pcisecuritystandards.org/documents/PCI-DSS-v3_2-AOC-Officer.docx?agreement=true&time=1493826893795)).
- d. Contractor agrees to indemnify and hold the City, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any loss of City customer payment card or identity information managed,

retained or maintained by the proposed second party service provider, including but not limited to fraudulent or unapproved use of such credit card or identity information.

Due to the new relationship between the parties and the potential for unforeseen complications, in the event that the City of Dayton determines that Contractor has not provided accurate, timely or complete tracking of program funds, the City at its sole option, reserves the right to modify the payment process mentioned above, up to and including taking over the payment process internally, provided that the City has given Contractor notice of its intention to modify the payment process and Contractor has not cured within thirty (30) days of such notice (or such longer period as the parties may mutually agree in writing after service of the notice). The City and the Contractor agree that the transfer of the payment process will be effected within 30 days of the expiration of the cure period and with minimal disruption to the program to ensure continuity of the payment process. Regardless of fault, should the City wish to take over the payment process internally, Contractor agrees to use its best efforts to transfer the responsibilities to the City within 60 days of the City's written notice with minimal disruption to the program to ensure continuity of the payment process. Contractor will work with the City to identify and correct any discrepancies between the City's MIS system, cash deposits and the NOL's reported as being issued. This may result in regular reports that will be identified and developed during the testing period.

#### **C. Delinquent Account Fees**

For purposes of this Agreement, "Delinquent Account(s)" means the accounts of persons assessed a civil penalty for violation of Section 70.121 of the R.C.G.O. and fail to timely pay the civil penalty. The City charges a returned check fee, currently \$35 and a late fee for failure to timely pay civil penalties, currently \$25. The City is entitled to retain the returned check and late fees in whole. If collection efforts on Delinquent Account(s) result in payment of the notice of liability for a violation of Section 70.121 of the Revised Code and General Ordinances of the City, the Contractor shall receive, as payment for the performance of all Contractor Obligations for the particular Delinquent Account, an amount equal to twenty five percent (25%) of the actual amount collected on the Delinquent Account less collection cost. For example, if as a result of the collection efforts, \$85.00 is collected on a Delinquent Account and collection cost equal \$28.00, the Contractor is entitled to payment of \$14.25 ( $\$85.00 - \$28.00 = \$57.00 \times 25\%$ ) The City agrees to provide all information related to these Delinquent Accounts to Optotraffic.

### **SECTION THREE. PERFORMANCE.**

#### **A. Time of the Essence**

The Contractor understands that time is of the essence in the establishment and maintenance of the Program for the City, and, therefore, the Contractor shall comply with meeting deadlines set forth in this Agreement, as may be amended or replaced by mutual agreement of the parties.

#### **B. Excusable Delay**

Either party may suspend performance during the occurrence of an "Excusable Delay", which shall mean and include any delay not occasioned by the fault or negligence of the delayed party and which results from acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority upon acts of the other party hereto, embargoes, fires, floods, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar natural or governmental causes, and

strikes or labor disputes (of or involving the delayed Party's employees only). Unless, in its sole discretion, the City has approved detailed plans for assurance of timely and conforming completion of the Services in the event of such specific delays, Excusable Delays do not include lock-outs, labor shortages, inability to obtain raw materials, fuel or supplies (unless caused solely by priorities, restrictions, or allocations imposed by governmental authority), or any other industrial disturbance.

In the event that the Contractor discovers any fact which may, or could with the passage of time, result in Excusable Delay, the Contractor will immediately: (1) advise the City of such fact; and (2) use its best efforts in taking all measures and precautions to reduce the effect of such Excusable Delay upon City's needs for the Products and Services. In addition, at any time at the City's request, the Contractor will furnish to the City: (1) such information as City may request concerning matters the presence or absence of which could result in delays; and (2) assurance or contingency plans with respect to those matters.

#### **SECTION FOUR. INDEMNIFICATION AND LEGAL ASSISTANCE**

##### **A. Indemnification**

The Contractor agrees to defend, indemnify and hold harmless the City, its officers, employees and agents from and against legal liability for all claims, losses, damages, and expenses (including reasonable attorney's fees) to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance of Contractor's Obligations as required under this Agreement, and/or infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property right, privacy or similar right of any third party and/or the acts, omissions or conduct of the Contractor or its officers, employees, contractors and agents; but excepting such claims, losses, damages and expenses or liabilities that are solely caused by or arise out of the negligence or wrongful acts or omissions of the City, its officers, employees and agents. In the event of any claim, threatened claim, or notification of either which may be the subject of indemnification provided for in this Section Four, the City will give the Contractor written notification thereof and provide the Contractor such reasonable assistance in the response and prosecution of any defense as the Contractor may request, at the Contractor's expense.

##### **B. Providing Legal Assistance**

In addition to the obligations listed in Section Four (A), above, Contractor agrees to provide legal assistance to the City in its defense of any lawsuits brought challenging the City's use of photo enforcement. This includes, but is not limited to, retaining legal counsel to assist in the defense of any such suits and providing witnesses, including expert witnesses, for use in any litigation. Contractor shall fully cooperate with the City in any such litigation, including providing documentation and information requested by the City and City shall take all necessary measures, including seeking a protective order or confidentiality agreement where appropriate, to protect Contractor's confidential and proprietary commercial, business, systems, operational, etc., information and data. Contractor shall be responsible for any litigation costs, including attorney's fees for any proceeding dealing with a protective order to protect the Contractor's confidential and proprietary commercial, business, systems, operational, etc. information and data.

## **SECTION FIVE. INSURANCE.**

During the performance of this Agreement and in lieu of a performance bond, the Contractor shall maintain with an insurance company authorized to conduct business in the State of Ohio and having at least an "A" rating from A.M. Best, General/ Comprehensive Liability Insurance, with a combined single limit in the minimum amount of One Million Dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) in the aggregate. The Contractor shall also maintain Workers' Compensation Insurance, in such amounts as required by law.

All policies of General/Comprehensive Liability Insurance shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insured(s) and shall contain the requirement that City be notified thirty (30) days in advance of any termination or diminution of coverage. Within thirty (30) days of the execution of this Agreement, Contractor shall furnish the City with copies of certificates of insurance demonstrating compliance with the insurance requirements contained herein.

The Contractor agrees to require any contractors and subcontractors engaged to provide all or any portion of the construction/installation or other services related to the performance of Contractor Obligations to comply with the insurance requirements set forth in this Section.

## **SECTION SIX. NON-DISCRIMINATION.**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off determination, rates of pay, or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances (RCGO) of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically written herein and that failure to comply therewith shall constitute a breach thereof entitling City to terminate this Agreement at its option.

## **SECTION SEVEN. WARRANTY.**

In addition to the warranties specified in Exhibit A, the Contractor also warrants that it shall perform all Contractor Obligations contracted for under this Agreement in a workmanlike manner.

## **SECTION EIGHT. TERM.**

The term of this Agreement shall commence on the date of the Agreement listed on page 1, above, and shall continue until September 1, 2018. The City shall have the right, but not the obligation, to extend the Agreement for five (5) consecutive (1) year periods through September 1, 2023; provided however, that any such extension and renewal shall be reduced to writing, making specific reference to this Agreement, and shall be executed by a duly authorized representative for each party, and if required or applicable, approved by the Commission of the City of Dayton.

The Contractor shall take all actions necessary to prepare at least five (5) but not more than twenty (20) permanent speed camera systems. The Contractor shall take all actions necessary to prepare at least five

(5) but not more than twenty (20) permanent red light systems. The Contractor agrees that it will install no less than five (5) permanent speed camera systems for the City-identified Program sites. The Contractor agrees that it will install no less than five (5) red light camera systems for the City-identified Program sites. The City's Project Manager shall identify the Program sites. During the term of this Agreement and any renewal period(s), the City shall have the right to require the Contractor to install cameras and related equipment, at Program sites identified by the City, provided that the total number of active Program sites does not exceed twenty eight (28) total sites including both red light and speed enforcement cameras. Additionally, the Contractor will maintain, equip and deliver to the City, at no cost, two (2) mobile speed operations and six (6) hand held units.

Contractor shall construct fixed speed enforcement capability, and activate said systems to capture excessive speed violations at a speed threshold determined solely by the Dayton Police Department. The construction of the fixed speed and red light enforcement cameras shall commence no later than July 30, 2017 and end on or before October 1, 2017. Activation of fixed speed enforcement and red light enforcement cameras shall commence no later than September 1, 2017.

#### **SECTION NINE. CONFIDENTIALITY.**

During the term of this Agreement and in furtherance of the performance of this Agreement, either party may provide the other party with information that it considers confidential or proprietary. Such information will be labeled in writing as "Confidential Information." City, on its behalf and that of its employees, agents, officers and elected officials, acknowledges that the software, documentation, training materials, and other information related to the Program, as well as Contractor's system, are confidential and proprietary information and trade secrets of Contractor ("Confidential Information"). City agrees to: (a) to hold the Confidential Information in strictest confidence and not to release such information to any party other than an employee or authorized agent of City with a need for such knowledge to utilize the Program as contemplated by this Agreement; (b) not to make use of the Confidential Information for its own benefit or for the benefit of any third parties, other than as contemplated by this Agreement; and (c) not to release or disclose Confidential Information to any other party either during the Term of this Agreement or after the termination of this Agreement. Each party will only copy the Confidential Information to the extent necessary to perform the work and services contracted for pursuant to this Agreement. Nothing in this Section shall prohibit or limit either party's use or disclosure of Confidential Information: (i) previously known to it, (ii) independently developed by it, (iii) acquired by it from a party which is not, to the other party's knowledge, under an obligation not to disclose such information, (iv) is or becomes publicly available through no breach of this Agreement by other party, or (v) such disclosure is required by law or through proper judicial process.

#### **SECTION TEN. OWNERSHIP OF EQUIPMENT AND SOFTWARE / RESTORATION OF PROGRAM INTERSECTION SITES**

It is agreed that the Contractor shall retain its license rights and, as may be applicable, full ownership in and to all equipment, computer programs, and other hardware and software used in the performance of this Agreement and Contractor Obligations. Contractor does not convey any equipment or system to the City, and which equipment or system shall remain the exclusive property of Contractor. Upon termination or expiration of this Agreement, the Contractor shall have the right to remove any and all equipment (including, but not limited to, poles, hardware, housings, and all other components of the camera system)



from the Program intersection sites. The Contractor shall also have the right to substitute, as may be necessary from time to time and with reasonable notice to the City, any and all equipment used in the performance of this Agreement or in furtherance of the Contractor's performance of the Contractor Obligations.

Upon removal of installed equipment from any Program intersection site, the Contractor shall be responsible for restoring the site to the reasonable satisfaction of the City, which, at a minimum, shall include disconnection of any wiring and cables, and restoring all streets, curbs, sidewalks, traffic controllers to their functional original condition. In completing such restoration activities, the Contractor shall comply with all then current City, state and federal laws, rules, regulations, codes and standards.

## **SECTION ELEVEN. TERMINATION.**

### **A. Termination**

This Agreement may be terminated in the event or for the following reasons:

1. The Contractor defaults in the performance of any Contractor obligations and/or any other term and condition of this Agreement, and such default is not cured within thirty (30) days (or such longer period as the parties may mutually agree in writing after service of the notice of default) from the date the City provides notice of the default.
2. If the quality of the equipment, products and or services is not acceptable or defective in such a manner or to such a degree as to prevent the substantial implementation of the Program.
3. The City defaults in the performance of the terms and conditions of this Agreement, including payment of the fee, and such default is not cured thirty (30) days (or such longer period as the parties may mutually agree in writing after service of the notice of default) from the date the Contractor provides notice of the default.
4. The City may terminate or suspend performance of the Agreement for the City's convenience upon thirty (30) days prior written notice to Contractor.
5. If a receiver or custodian (as defined in the U.S. Bankruptcy Code) is appointed for the Contractor.
6. If the Contractor ceases to exist; if the Contractor shall be declared insolvent.
7. For any reason as may be permitted by law.

In addition to the foregoing, the City may immediately terminate this Agreement if a voluntary petition under any provision of the U.S. Bankruptcy Code, as amended, or any successor statute, is filed by the Contractor, or if any involuntary petition to obtain an order for relief against the Contractor is filed, provided that such voluntary and/or involuntary petition is not vacated within forty-five (45) days from the date of filing.

### **B. Procedure on Termination or Expiration**

Upon the termination or expiration of this Agreement, the following shall apply:

1. Unless otherwise agreed in writing, the obligations, liabilities, warranties, representations, rights and remedies of each of the parties accrued, made or incurred prior to or at the time of any termination or expiration of this Agreement shall survive such termination or expiration of this Agreement.
2. The City may, at its option, exercise any remedy available to it in law or in equity, including the exercise of any remedies provided under the Uniform Commercial Code, as adopted by the State of Ohio.
3. On the date and to the extent specified in any notice of termination, the Contractor shall stop work under this Agreement.
4. The Contractor shall immediately provide to the City any and all information, materials and records provided by the City to the Contractor under this Agreement.
5. The Contractor shall take such action as may be necessary for the protection and preservation of the City's property.
6. The Contractor shall comply with all City instructions for the timely transfer of all terminated portions of this Agreement to the City and/or such person or entity identified by the City.
7. The Contractor shall assist the City or such person or entity identified by the City in completing any activities undertaken prior to the date of termination or expiration of this Agreement, including, but not limited to, any judicial and administrative proceedings.
8. Contractor, for a period of twelve (12) months after the termination date, will continue with the collection and distribution of NOL payments in accordance with this Agreement. City and Contractor agree to negotiate a fair and equitable way to collect and distribute NOL payments that remain outstanding after this twelve (12) month period.

## **SECTION TWELVE. COMMUNICATIONS AND NOTICES.**

Any written communication or notice required or permitted under this Agreement, exclusive of communications related to the citation processing services to be provided, shall be made in writing and shall be delivered personally, sent by express delivery, certified mail or first class U.S. mail, postage pre-paid and addressed to the parties at the respective addresses set forth in this Agreement. Such communications and notices shall be delivered or sent to the respective party at the following address:

Contractor:     Optotraffic, LLC  
4600 Forbes Boulevard  
Lanham, Maryland 20706  
Attention: Thomas Bouchard  
Chief Executive Officer

City:             City of Dayton Police Department  
335 W. Third St.  
Police Department  
Dayton, OH 45402  
  
Attn: Chief Richard Biehl

With a copy to:

City of Dayton, Ohio  
101 West Third Street  
Dayton, Ohio 45402  
  
Attention: City Manager

Nothing contained in this Section shall be construed to restrict the transmission of routine communications, or communications related to the performance of citation processing services to be provided, between representatives of the Contractor and the City.

#### **SECTION THIRTEEN. GOVERNING LAW.**

This Agreement shall be governed by the laws of the State of Ohio, without giving effect to its choice of law provisions or principles. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

#### **SECTION FOURTEEN. WAIVER.**

A waiver by either City or the Contractor of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

#### **SECTION FIFTEEN. INTEGRATION.**

This Agreement, together with all Exhibits and/or attachments, represents the entire and integrated agreement between the City and the Contractor. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

#### **SECTION SIXTEEN. AMENDMENT.**

The City or the Contractor may amend or modify this Agreement, provided that such amendment or modification makes specific reference to this Agreement, is executed in writing, signed by a duly authorized representative of each party, and, if required or applicable, approved by the Commission of the City of Dayton.

#### **SECTION SEVENTEEN. ASSIGNMENT.**

The Contractor shall not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Section, however, shall prevent Contractor from employing independent contractors, associates, and subcontractors to assist in the performance of Contractor Obligations.

#### **SECTION EIGHTEEN. INDEPENDENT CONTRACTOR**

The Contractor is an independent contractor and not subject to the control by the City, except as provided herein. The parties agree that the relationship between the parties shall not be held out or construed as employer-employee, joint venturer, or principal-agent. The Contractor shall not act or represent itself in such a manner as to assume or create any obligation on behalf of, or in the name of, the City, without the prior written and express authority to do so by a duly authorized representative. Contractor is not a public office or a person responsible for public records as those terms are defined by the Ohio Revised Code 149.43, as amended from time to time.

## **SECTION NINETEEN. ACCEPTANCE**

All equipment, products, computer programs, software and hardware, any like and similar deliverables to be provided under this Agreement by the Contractor shall be tested in accordance with the City's and industry recognized standard testing techniques before being accepted by City.

Such equipment, products, computer programs, software and hardware, and all other Contractor Obligations shall be accepted when the City operates it, or, in the case of services, is provided in accordance with the performance specifications and all requirements set forth herein.

## **SECTION TWENTY. ORDER OF PRECEDENCE.**

In the event of any inconsistency or conflict between the terms of the Agreement and any Exhibit, the language in the Agreement shall control. In the event of any inconsistency or conflict between the terms of Exhibits A and B, the language contained in Exhibit A shall control.

## **SECTION TWENTY-ONE. MISCELLANEOUS.**

- A. To the extent that Contractor is responsible for performing certain Contractor Obligations on the City's premises, the Contractor and its employees, agents, and representatives shall comply with the City's rules and regulations then in effect at the locations where the Contractor Obligations are performed.
- B. The titles of the various sections of this Agreement are solely for convenience and are not part of the Agreement for purposes of interpreting the provisions hereof.
- C. Unless otherwise specified, the terms "herein," "hereunder," "herewith," and words of similar import refer to this entire Agreement; the singular includes the plural, and conversely.
- D. It is specifically agreed between the parties that the provisions of Sections 4, 7 and 9 shall survive the expiration or termination of this Agreement.
- E. Contractor agrees to maintain only City of Dayton program-related information in accordance with the City of Dayton's "Schedule of Records Retention and Disposition Continuation Sheet" per Schedule Numbers 10-60062, 10-50059 and 10-50076.
- F. In order to ensure that the City is being paid the appropriate sum of money under this Agreement, the City has the right to inspect and audit Contractor's records pertaining to this Agreement upon reasonable notice. In addition, the Contractor shall provide to the City a copy of an annual audit provided by an outside auditor and inclusive of programmatic revenue tracking and disbursements.

IN WITNESS WHEREOF, the City and the Contractor, each by a duly authorized representative, have executed this Agreement as of the day and date set forth above.

WITNESSED BY:

OPTOTRAFFIC, LLC



By:

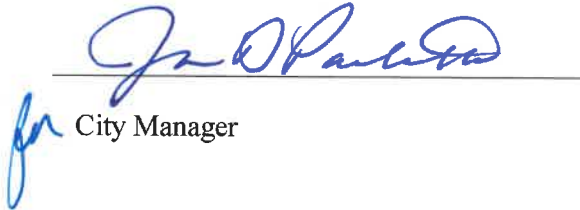


Title: Chief Executive Officer

WITNESSED BY:

CITY OF DAYTON, OHIO



  
for City Manager

APPROVED AS TO FORM

AND CORRECTNESS:



City Attorney

APPROVED BY THE COMMISSION OF  
THE CITY OF DAYTON, OHIO:

July 12, 2017

Min. Bk. I-14 Pg. \_\_\_\_\_

  
Clerk of the Commission